

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to waivers and “primary care” definition and providing an opportunity for public comment

The Public Health Department hereby proposes to amend Chapter 15, “Swimming Pools and Spas,” Chapter 70, “Lead-Based Paint Activities,” Chapter 108, “Medical Residency Training State Matching Grants Program,” Chapter 155, “Licensure Standards for Substance Use Disorder and Problem Gambling Treatment Programs,” and Chapter 178, “Variances and Waivers of Public Health Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 17A, 125, 135 and 135I; 2020 Iowa Acts, House File 2197; and 2020 Iowa Acts, House File 2389.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 125, 135 and 135I; 2020 Iowa Acts, House File 2197; and 2020 Iowa Acts, House File 2389.

Purpose and Summary

2020 Iowa Acts, House File 2197, defines “primary care” specifically, and this definition is proposed to be incorporated within the definitions rule in Chapter 108. The proposed amendment will add the following definition: “‘Primary care’ means care that shall include psychiatry, obstetrics, gynecology, family medicine, internal medicine, and emergency medicine.”

2020 Iowa Acts, House File 2389, updates the Iowa Code sections related to granting variances or waivers to eliminate the word “variances” and updates the requirement for the reporting of waiver determinations of the Department into the Legislative Services Agency Internet site to within 60 days of the Department’s decision regarding a waiver request. The proposed amendments to Chapters 15, 70, 155 and 178 implement the Iowa Code changes.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 13, 2020. Comments should be directed to:

Susan Dixon
Department of Public Health
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.dixon@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—15.7(135I) as follows:

641—15.7(135I) Variances Waivers. A variance waiver to these rules may be granted only by the department. A variance waiver can be granted only if sufficient information is provided to substantiate the need for and propriety of the action.

15.7(1) Requests for variances waivers shall be in writing and shall be sent to the local inspection agency for comment. The local inspection agency shall send the request for variance waiver to the department within 15 business days of its receipt.

15.7(2) The granting or denial of a variance waiver will take into consideration, but not be limited to, the following criteria:

a. Substantially equal protection of health and safety shall be provided by a means other than that prescribed in the particular rule, or

b. The degree of violation of the rule is sufficiently small so as not to pose a significant risk of injury to any individual, and the remedies necessary to alleviate this minor violation would incur substantial and unreasonable expense on the part of the person seeking a variance waiver.

15.7(3) Decisions shall be issued in writing by the department and shall include the reasons for denial or granting of the variance waiver. Copies of decisions shall be kept at the department, and a copy shall be sent to the contracting board of health.

15.7(4) The applicant for a variance waiver that is denied may request a review of the denial by the director of the department. The request shall be submitted in writing within 30 days of the applicant’s receipt of the department’s denial of a variance waiver request. The request for a review shall be addressed to the Iowa Department of Public Health, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. The decision of the director shall be considered the department’s final agency action.

15.7(5) The applicant may petition for judicial review of the final agency action pursuant to Iowa Code chapter 17A.

ITEM 2. Amend rule 641—70.11(135) as follows:

641—70.11(135) Waivers. Rules in this chapter are not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 3. Adopt the following **new** definition of “Primary care” in rule **641—108.2(135)**:
“*Primary care*” means care that shall include psychiatry, obstetrics, gynecology, family medicine, internal medicine, and emergency medicine.

ITEM 4. Amend subrule 108.3(5) as follows:

108.3(5) A sponsor shall offer persons to whom a primary care, ~~including psychiatry~~, residency position is awarded, the opportunity to participate in a rural rotation to expose the resident to the rural areas of the state.

ITEM 5. Amend rule **641—155.1(125,135)**, definition of “Variance,” as follows:

~~“Variance” or “waiver”~~ “*Waiver*” means action by the committee or division that suspends the requirements of a standard on a case-by-case basis in accordance with 641—Chapter 178.

ITEM 6. Amend **641—Chapter 178**, title, as follows:

~~VARIANCES AND WAIVERS OF PUBLIC HEALTH~~
ADMINISTRATIVE RULES

ITEM 7. Amend subrule 178.1(1) as follows:

178.1(1) Definition. For purposes of this chapter, “a waiver ~~or variance~~” means action by the department that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 8. Amend subrule 178.1(12) as follows:

178.1(12) Summary reports. ~~Semiannually~~, When the department grants a waiver, the department shall ~~prepare a summary report identifying~~ submit to the designated Internet site, within 60 days of the waiver decision, the following information: identification of the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department’s actions on waiver requests. If practicable, the report shall ~~detail~~ include information detailing the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 9. Amend rule 641—178.2(17A,135) as follows:

641—178.2(17A,135) Sample petition for waiver. A petition for waiver filed in accordance with 641—178.1(17A,135) must meet the requirements specified therein and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF PUBLIC HEALTH		
<div style="border-bottom: 1px solid black; margin-bottom: 5px;">Petition by (name of petitioner) for the waiver/variance <u>waiver</u> of (insert rule citation) relating to (insert the subject matter).</div>	}	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">PETITION FOR WAIVER/VARIANCE <u>WAIVER</u></div>

1. Provide petitioner’s (person asking for a waiver ~~or variance~~) name, address, and telephone number. Also include the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

a. Why applying the rule would result in undue hardship to the petitioner;

b. Why waiving the rule would not prejudice the substantial legal rights of any person;

c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and

d. How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department and petitioner relating to the regulated activity, license, registration, certification or permit that would be affected by the waiver. Include a description of each affected license, registration, certification, or permit held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the department's action in similar circumstances.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date